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September 22, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation: MB Docket No. 16-42; CS Docket No. 97-80. *Expanding Consumers' Video Navigation Choices; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*

Dear Ms. Dortch:

This is to notify you that on September 20, 2016, on behalf of Cox Communications, Inc. ("Cox"), Barry Ohlson, Vice President, Regulatory Affairs, Cox Enterprises, Inc.; Jennifer Prime, Director, Regulatory Affairs, Cox Enterprises, Inc.; and the undersigned, of Wilkinson Barker Knauer, LLP, counsel to Cox, met separately with David Grossman of the Office of Commissioner Clyburn, Marc Paul of the Office of Commissioner Rosenworcel, Matthew Berry of the Office of Commissioner Pai, and Robin Colwell of the Office of Commissioner O'Rielly.

The purpose of each of these meetings was to discuss the draft order under consideration by the Commission in the above-referenced proceeding.¹ Cox outlined several concerns with the current proposal, as reflected on the attached handout. In particular, Cox urged the Commission to adopt an HTML5 safe harbor for multichannel video programming distributor apps. HTML5

¹ *Fact Sheet: Chairman Wheeler's Proposal to Increase Consumer Choice and Innovation in the Video Marketplace*, FED. COMM'NS COMM'N MEDIA BUREAU (Sept. 8, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0908/DOC-341152A1.pdf.

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is a recognized, open standard that will allow the greatest availability of apps for the widest number of platforms at the least cost.²

This letter is filed pursuant to Section 1.1206 of the rules of the Federal Communications Commission. Please direct any questions to the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By: /s/ Natalie G. Roisman

Natalie G. Roisman
Counsel to Cox Communications, Inc.

Enclosure

cc: David Grossman
Marc Paul
Matthew Berry
Robin Colwell

² See Letter from Paul Glist, Davis Wright Tremaine, to Marlene H. Dortch, FCC, MB Docket 16-42, CS Docket 97-80 (Aug. 19, 2016) (describing the advantages of HTML5 apps as an alternative means for making MVPD services available to retail navigation devices).

Cox Enterprises, Inc. / Cox Communications, Inc.
Navigation Devices (MB Docket No. 16-42, CS Docket No. 97-80)

As described in the FCC Fact Sheet, the draft order raises concerns that will uniquely impact Cox as both an MVPD and broadcaster.

- Cox Media Group (TV and radio broadcasting, publishing, and advertising/digital media) and CCI (broadband, advanced video, telephone, and other services) rarely file jointly with the FCC but did so in this proceeding based on serious concerns.
- The new proposal does not mitigate the concerns with the NPRM and raises a host of new ones – while Cox appreciates the movement to an apps-based foundation, the failure to align to a common HTML5 approach, at least as a safe harbor, will be particularly burdensome for CCI and its customers.

Overall, the new proposal remains starkly inconsistent with marketplace realities and inappropriately interferes with private business negotiations grounded in copyright law.

- Negotiated distributor-programmer licensing agreements are essential to protecting programmers' investments in their brands and MVPDs' relationships with programmers. It is wholly inappropriate for the FCC to adopt a rule that, in the words of the Copyright Office, "could interfere with copyright owners' rights to license their works as provided by copyright law, and restrict their ability to impose reasonable conditions on the use of those works through the private negotiations that are the hallmark of the vibrant and dynamic MVPD marketplace."

The Commission should not force MVPDs like Cox to develop multiple device- or software-specific apps.

- While the Fact Sheet says that MVPDs "can provide the software for their apps to [widespread] platforms in a variety of manners, including HTML5 or native apps," the promise of HTML5 is illusory; without a safe harbor, there can be no guarantee that an MVPD can meet the FCC's rules by using HTML5, given that a "widely deployed" platform may demand native apps.
- By declining to adopt a safe harbor, the draft order thus fails to impose shared responsibility on MVPDs and platforms to mutually address consumer needs and instead inequitably burdens MVPDs with the obligation to provide customized native apps as demanded by individual widely deployed platforms.
 - Exponentially expanding the number of apps to be developed and supported will require enormous initial and maintenance resources.
 - The proposed rules would force MVPDs away from an open standard toward a fragmented marketplace of proprietary apps.
- Popular operating system makers and other platforms already demand revenue shares from MVPDs for the placement of apps in their app stores and appear to be exploring additional MVPD-based revenue streams. Mandating placement could force MVPDs to pay whatever price these platforms may demand, ultimately leading to higher costs for consumers.

Cox will face a significant burden to meet its own high standards of prioritizing customer service if forced to support multiple apps on all widespread platforms.

- In subscribing to our services, a customer creates a relationship with Cox and expects Cox to deliver a host of functions and quality associated with the service.
- The complicated approach in the draft order will directly create a more complicated, costly approach to customer service. The proposal does not account for the vast resources MVPDs will need to devote to representative training, truck rolls, upgrades, and other customer service support – all of which will be diluted by virtue of the different flavors of apps that will be deployed and will need to be supported.
- The proposal does not include any sunset provision to allow an MVPD to cease supporting a particular app, even if customers have largely abandoned that particular platform for new technologies.

The proposed order needs many changes to be workable; one relatively simple shift would be adoption of an HTML5 safe harbor.

- Rather than trying to create and support numerous apps that will support a limited part of the subscriber base and foreclose competitive startups, the FCC should allow MVPDs to develop apps through HTML5 as a means of satisfying the new rules. HTML5 is a recognized, open standard that will allow the greatest availability of apps at the least cost.
- MVPDs and platform developers could still enter into voluntary business arrangements to develop customized native apps, particularly through business-to-business contracts.